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## Louisiana: The Legal History of Europe in a Single US State

Posted on 23/05/2011 by Karen Baston



### Louisiana: The Legal History of Europe in a Single US State

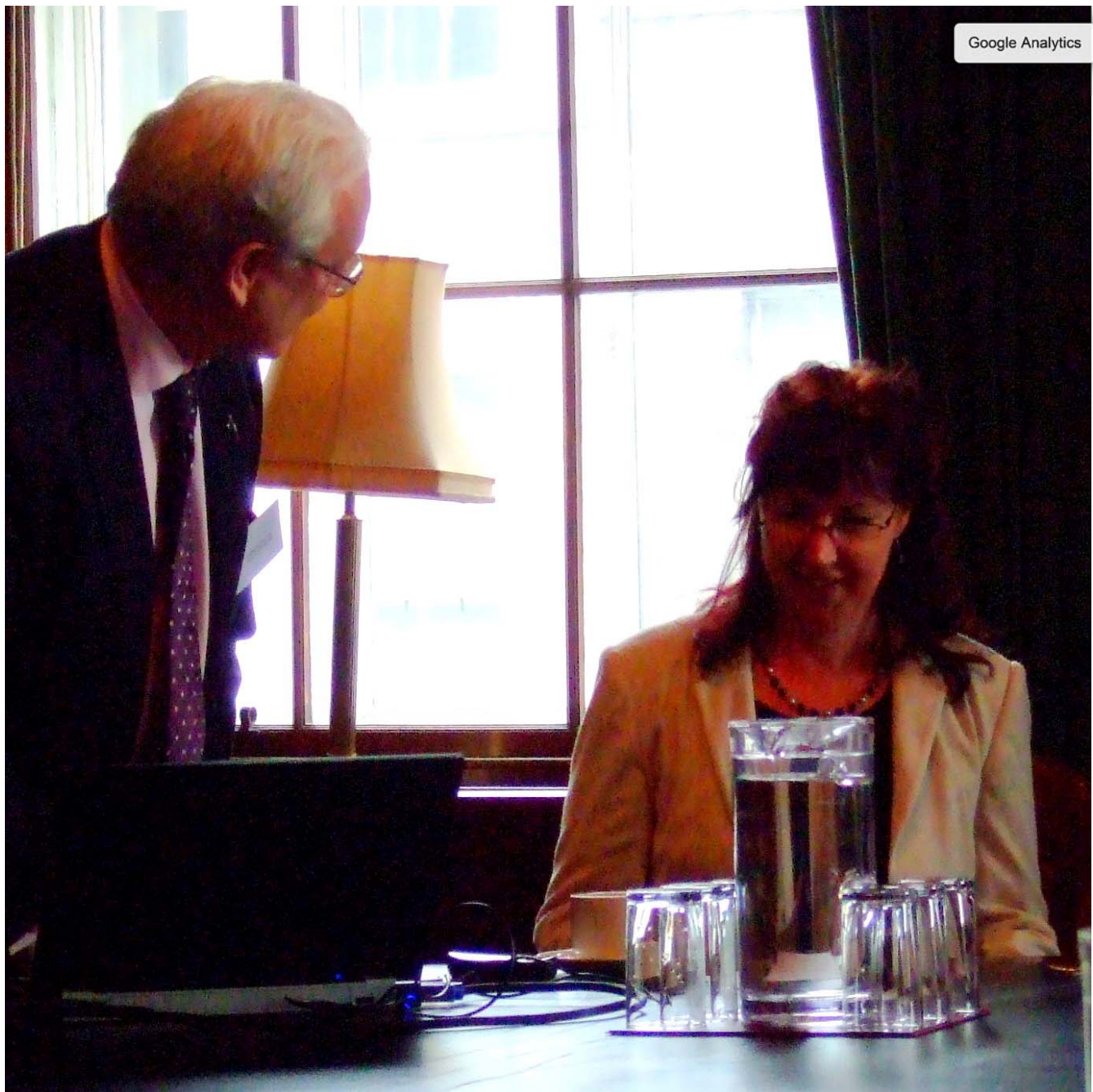
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#### Workshop Report

The state of Louisiana is unique: it is the only US state to have a civil law code. This code was inspired by European law codes such as the *Code Napoléon* as well as other European sources and it went on to have a surprising influence on modern law codes worldwide. This workshop set out to explore the history of the Louisiana Code as well as its impact. It took place under the gaze of portraits of thinkers past in the Old College's Raeburn Room. What follows is a preliminary report about the presentations given over the two days of this lively and fascinating conference.

The event was opened by Professor Lesley McAra, Head of the School of Law, who revealed that she is a relative of the eighteenth century lawyer and book collector Andrew Crosbie – the original of Paulus Pleydell in Sir Walter Scott's *Guy Mannering*, a well known character to legal historians. This set the tone perfectly for the conference especially since the first presentation took us into the realm of book history.





*Professors Cairns and McAra start the workshop*

[Professor John W. Cairns](#) (University of Edinburgh) presented **'Planning and Printing a Code/Digest'** in which he looked at the quality of printing of the original Louisiana Code and the implications of this. The Code was produced quite quickly: two jurists – Louis Moureau-Lislet and James Brown – were appointed to work with a committee to create a civil code on 7 June 1806. By 31 March 1808 their work was complete and an act to enact the Digest was passed. By October of the same year, 600 copies of the Digest of the Civil Laws Now in Force in the Territory of Orleans were distributed throughout Louisiana. Printing the Digest (it was only called a Code from 1825) was complicated by the need to include a dual text in both English and French. The resulting printed work was functional rather than beautiful and mistakes occur throughout which reveal the hasty production of the book.

[Professor Markus Puder](#) (Loyola University) and [Professor John Lovett](#) (Loyola University) presented two aspects







of **'Possession, Prescription and Uncertain Land Titles in Louisiana: 1808-1825'**. Puder opened the discussion with a case study of the title claims of the disputed land of Feliciana (in West Florida). Ownership of the region was contested between Spain and the United States and its status as part of the Louisiana Purchase only complicated matters. Spain eventually ceded all of Florida to the US in 1819 but this did not resolve individuals' claims to property in the territory. The case of *Foster & Elam v Neilson* (1829) was only the first of seventy-cases over the next thirty years as Louisiana property law developed. Lovett followed on with a study of case law from the early Louisiana Supreme Court between 1808 and 1825. Land titles were often uncertain – were they French or Spanish? – and judges had to work out what sources of law to use when deciding ownership. Lovett found twenty-five court decisions in which the court filled in gaps in the law. The judges' decisions were 'like legal cocktails' and they borrowed heavily from European civil law and French sources especially Pothier. The revised Code of 1825 codified the problems the courts had dealt with since 1808.



[Ms Asya Ostroukh](#) (University of Edinburgh) presented **'The Significance of Quebec Sources for Understanding the Origin and Nature of Louisiana's Civil Law Codification'**. Commissioners in Quebec set out to codify their laws in 1857 and the resulting *Civil Law Code of Lower Canada* was adopted in 1866. The Commissioners used sources ranging from the *Code Napoléon* (1804) to



the *Réglementation législative* of the Papal States (1834) but one of their most favoured sources was the Civil Code of the State of Louisiana of 1825. Ostroukh offered several

suggestions for the popularity of Louisiana's Code with the Quebec commissioners not least that it offered a more modern interpretation than the *Code Napoléon*. The Commissioners used Fortuné Antoine de Saint-Joseph's *Concordance entre les codes civils étrangers et le Code Napoléon* (1856) when compiling their Code and often preferred the provisions of the Louisiana Code to the Code Napoléon. The library used by the Quebec compilers survives and Ostroukh will be making a study of it as part of her doctoral research.







[Professor Vernon V. Palmer](#) (Tulane University) presented **‘Slavery and Louisiana Civil Law, 1825-1860’**. Palmer began with a brief survey of laws relating to slavery from Louis XIV’s 1685 *Code Noir* to the final removal of all slavery provisions in the Louisiana Civil Code in 1870. Laws relating to slavery were unique to Louisiana and came from French, Spanish, Spanish-Roman, and American sources. The 1808 Code had included forty-five provisions relating to slavery but after 1808 a new form of emancipation by prescription emerged. Of the 1200 appeals cases contested in the Louisiana Supreme Court, 25 per cent were slave-related. Slaves could sue their masters for freedom but many of the cases were to do with protecting buyers’ rights: New Orleans had the biggest slave marketplace. The laws of France and Spain were spliced together and, as it expanded, slavery was woven into the fabric of the law.



Dr Agustin Parise (Max-Planck-Institut) presented '**Influence of the Louisiana Civil Code of 1805 in Latin American Codification Movements: The References to Louisiana Provisions in the Argentine Civil Code of 1871**'. When they set out on their project, the Argentine codifiers, as the codifiers of Quebec had done, looked to the Louisiana Code. Argentina identified a shared Spanish heritage with Louisiana and saw its law code as an example of civilian success in the new world. The Argentine Civil Code includes 295 references to the Louisiana Code in its 4,051 articles: most of the Louisiana provisions still apply. The Argentine Code's compiler provided extensive notes explaining the rationale for using (or not using) the different sources and used two concordances, one French and one Spanish. Both of the concordances gave Louisiana's Code prominence. Parise has traced three difference types of references to Louisiana law in the Argentine Code and has found that most of the references are to do with real rights.

[Ms Catherine MacMillan](#) (Queen Mary, University of London) presented '**Judah Benjamin: The Louisianan's**



**Influence on British Law**' which showed how Louisiana's law went out into the world by the actions of one extraordinary character. The swashbuckling Benjamin (1811-1884), a short portly dynamo, was in turn a student at Yale, a Louisiana lawyer, a US Senator, Attorney General, Secretary of War and Secretary of State for the Confederate States of America, an English barrister, and the builder of an elaborate house in Paris. In England, he published *A Treatise on the Law of Sale of Personal Property* (1868; 2nd edn 1873; 3rd edn 1883) in which he managed to make civil law appealing to English common lawyers and which went on to influence English treatises on the subject. Benjamin also played a role in Canadian legal history (hence the 'British' in the paper's title) by helping to define Canadian confederation. Although he lost most of the cases he was involved with, Benjamin's use of French law which he had by way of Louisiana had an impact on the development of Canadian political theory. MacMillan is at work on a legal biography of Benjamin which is eagerly awaited!





Professor Cairns organised and convened the workshop. The sessions were ably chaired by Professor Ernest



Metzger (University of Glasgow) and Dr Paul du Plessis (University of Edinburgh). The relaxed atmosphere on the two days of the workshop allowed for much more informal discussion which was enjoyed by all of the participants. A convivial dinner ended the proceedings in the Old College's Elder Room.

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The workshop's exploration of Louisiana law as a study of European legal history was certainly a great success. It is hoped that the papers presented at the workshop will be printed in due course.

The Centre would like to thank Christine Goulding from the School of Law Research Office for her superb organisation of the event.

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